

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.  
SUITE 301  
WASHINGTON, D.C.  
20036  
—  
(202) 393-2266  
FAX (202) 393-2156  
E-MAIL alvordlaw@aol.com

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

OF COUNSEL  
URBAN A. LESTER

November 15, 2002

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

RECORDATION NO. 24213-A FILED

NOV 18 '02

11-18-02

Dear Mr. Williams:

**SURFACE TRANSPORTATION BOARD**

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are two (2) copies of Subordination Agreement, dated November 7, 2002, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Security Agreement which is being filed with the Board under Recordation Number 24213.

The names and addresses of the parties to the enclosed document are:

Borrower: The Durango & Silverton  
Narrow Gauge Railroad Company  
479 Main Avenue  
Durango, CO 81301

Lender: Colorado Housing and  
Finance Authority  
1981 Blake Street  
Denver, CO 80202

Original  
Lender: Bank of America, N.A.  
(f/k/a Nationsbank, N.A.)  
One Financial Plaza  
Ft. Lauderdale, FL 33394

Mr. Vernon Williams  
November 15, 2002  
Page Two

A description of the railroad equipment covered by the enclosed document is:

Durango & Silverton	Nomad Business Car	B-3
Durango & Silverton	Locomotive	42 (formerly 420)
Durango & Silverton	Locomotive	R-1
Durango & Silverton	Locomotive	493
Durango & Silverton	Locomotive	498

A short summary of the document to appear in the index follows:

Subordination Agreement

Also enclosed is a check in the amount of \$30.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/anr  
Enclosures

RECORDATION NO. 24213 A  
NOV 1 8 02  
11-10000  
SURFACE TRANSPORTATION BOARD

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Subordination"), is executed this 7<sup>th</sup> day of November, 2002, by and between Bank of America, N.A. fka NationsBank, N.A. ("Original Lender"), Colorado Housing and Finance Authority ("Authority") and Durango & Silverton Narrow Gauge Railroad Company, a Colorado corporation ("Borrower").

WITNESSETH

WHEREAS, Borrower is the owner of certain collateral (the "Collateral") described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, as security for the payment of certain indebtedness to Original Lender and performance of certain obligations as evidenced by (1) a promissory note dated April 30, 1999 in the principal amount of Fifteen Million Dollars (\$15,000,000); (2) a promissory note dated October 10, 2000 in the principal amount of Eight Hundred Fifty Thousand Dollars (\$850,000); and (3) an International SWAP Dealers Association, Inc. Master Agreement dated as of April 30, 1999, together with all other instruments amending, replacing, renewing or modifying such indebtedness, and for all other indebtedness from Borrower to Original Lender now or hereafter existing (collectively, the "Original Indebtedness"), the Borrower has granted to the Original Lender a security interest in the Collateral created pursuant to (a) a certain Security Agreement dated March 13, 1997; (b) a certain Deed of Trust, Security Agreement, Financing Statement and Assignments of Leases and Rents dated March 13, 1997, as amended by that certain First Amendment to Deed of Trust, Security Agreement, Financing Statement and Assignment of Leases and Rents dated September 5, 1997, that certain Modification Agreement dated April 30, 1999, and that certain Third Modification Agreement dated October 10, 2000 and filed on November 28, 2000 with the Surface Transportation Board under Recordation Number 20593-B; (c) a certain Amended and Restated Security Agreement dated April 30, 1999; and (d) a certain Rolling Stock Security Agreement dated March 13, 1997 and filed on March 24, 1997 with the Surface Transportation Board under Recordation Number 20593, together with all other instruments amending, replacing renewing or modifying such agreements (collectively the "Original Security Agreement"), as evidenced by certain financing statements including but not limited to, the following Financing Statements:

- (a) Financing Statement recorded on March 17, 1997 as Reception No. 19972020772 in the Office of the Colorado Secretary of State (the "Secretary"). Amendments recorded on June 7, 2000 as Reception Nos. 20002052175, 20002052176, and 20002052177, and on March 1, 2002 as Reception Nos. 20022022418 and 20022022419 in the Office of the Secretary;
- (b) Financing Statement recorded on March 17, 1997 as Reception No. 19972020773 in the Office of the Secretary. Amendments recorded on December 8, 1997 as Reception No. 19972109638, and on March 1, 2002 as Reception Nos. 20022022415 and 20022022416 in the Office of the Secretary;
- (c) Financing Statement recorded on April 17, 2000 as Reception No. 20002034407 in the Office of the Secretary;
- (d) Financing Statement recorded on March 1, 2002 as Reception No. 20022022298, in the Office of the Secretary; and
- (e) Financing Statement recorded on March 1, 2002 at Reception No. 20022022299 in the Office of the Secretary,

(collectively, the "Original Financing Statements"); and

WHEREAS, Borrower requested that the Authority make to it a loan in a principal amount not to exceed One Million Dollars (\$1,000,000) (the "Authority Loan"); and

WHEREAS, the Authority has agreed to make the Authority Loan which is evidenced by a promissory note in a principal amount not to exceed One Million Dollars (\$1,000,000) (the "Authority Note") and secured by a Security Agreement dated November 14, 2002, and filed on \_\_\_\_\_ with the Surface Transportation Board under Recordation Number \_\_\_\_\_ (the "Authority Security Agreement"), granting a security interest in the Collateral as evidenced by a Financing Statement recorded on September 26, 2002 at Reception No. 20022101924 in the Office of the Secretary (the "Authority Financing Statement"), provided the Authority Security Agreement grants a first and prior security interest in the Collateral which is senior and prior to the security interests evidenced by the Original Financing Statements and all other documents evidencing or securing the Original Indebtedness (collectively, the "Original Loan Documents"), as security for all disbursements or expenditures made or to be made under the Authority Note, the Authority Security Agreement and the Authority Financing Statement, and all other security documents securing the Authority Loan (hereinafter collectively referred to as "Authority Loan Documents").

NOW, THEREFORE, for good and valuable consideration, each to the other in hand paid, the receipt and sufficiency of which are hereby confessed and acknowledged by Original Lender, Original Lender hereby states and agrees as follows:

1. Original Lender hereby represents to the Authority that it is the current secured party under the Original Security Agreement and Original Financing Statements and payee of the Original Indebtedness, and does hereby agree that, with respect to the Collateral only, the Original Security Agreement, Original Financing Statements and the Original Loan Documents, and all of Original Lender's rights thereunder or under any other document or instrument evidencing or securing the Original Indebtedness, shall be in all respects subordinate, secondary, inferior and junior to the security interest created by the Authority Security Agreement, the Authority Financing Statement and the other Authority Loan Documents, and all extensions, renewals or modifications made therein, all as executed and delivered by the Borrower to the Authority as security for the Authority Note; provided, however: (i) the foregoing documents shall not secure an amount in excess of \$1,000,000, plus interest, late charges and any other amounts advanced by the Authority to secure the Authority Loan, without the prior written consent of Original Lender; and (ii) in all other respects, the Original Security Agreement and the Original Financing Statements shall maintain a perfected first lien as to all collateral other than as described on Exhibit A to secure all other modifications, consolidations and future advances, all without the requirement of the consent of the holder of the Authority Loan.

2. For the purposes of this Subordination, Original Lender acknowledges and agrees that all disbursements of loan proceeds and other advances made by the Authority pursuant to the Authority Note, Authority Security Agreement, Authority Financing Statement and other Authority Loan Documents shall be conclusively presumed to have been disbursed in accordance therewith and for the purposes therein provided, and Original Lender does hereby agree that the Authority is not obligated to supervise the utilization, application and disposition of such loan proceeds.

3. Original Lender hereby designates and appoints the Authority or any person or entity acting upon the directions of the Authority as its attorney-in-fact for the sole and limited purpose of inserting information in this Subordination regarding the date and recording of the Authority Security Agreement.

4. If any provision of this Subordination or the application thereof to any entity, person, or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

5. This Subordination contains the entire agreement between the parties hereto with respect to the subordination of the Original Security Agreement, Original Financing Statements and the Original Loan Documents to the Authority Security Agreement, Authority Financing Statement and the Authority Loan Documents and supercedes and replaces the Original Subordination in its entirety.

6. This Subordination and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their respective successors and assigns.

7. This Subordination is made and executed under and in all respects will be governed and construed by the laws of the State of Colorado, where the real property is situate.

IN WITNESS WHEREOF, the parties hereto have executed this Subordination on the date and year first above written.

"Original Lender"

Bank of America, N.A. fka  
NationsBank, N.A.

ATTEST:

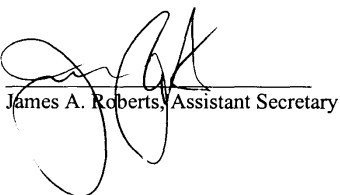


By: Richard M. Bartholmae  
Title: Vice President

"Authority"

Colorado Housing and Finance Authority

ATTEST:

  
James A. Roberts, Assistant Secretary

By: Milroy A. Alexander  
Milroy A. Alexander,  
Executive Director

"Borrower"

Attest:

Durango & Silverton Narrow Gauge  
Railroad Company, a Colorado corporation

By: Carol E. Harper  
Carol E. Harper, Secretary

By: Allen C. Harper  
Allen C. Harper, President

STATE OF ~~COLORADO~~ FLORIDA )  
 ) ss.  
COUNTY OF Hillsborough )

The foregoing instrument was acknowledged before me this 7 day of  
Nov, 2002, by Richard M. Bartholomae  
as Vice President of Bank of America, fka NationsBank,  
N.A.

Witness my hand and official seal.

My commission expires: 2/17/05.

[Seal]



Brenda D. Warmke  
Commission # CC 991648  
Expires Feb. 17, 2005  
Bonded Thru  
Atlantic Bonding Co., Inc.

Brenda D. Warmke  
Notary Public

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day  
of November, 2002, by Milroy A. Alexander as Executive Director  
and James A. Roberts as Assistant Secretary of Colorado Housing and Finance Authority.

Witness my hand and official seal.

My commission expires: June 24, 2006.

[Seal]



Karen Gutjahr  
Notary Public

STATE OF Florida ~~COLORADO~~ )  
 ) ss.  
COUNTY OF Dade )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of November, 2002, by Allen C. Harper as President and Carol E. Harper as Secretary of Durango & Silverton Narrow Gauge Railroad Company, a Colorado corporation.

Witness my hand and official seal.

My commission expires: February 6, 2006.

[Seal]

Alina Maruri  
Notary Public



EXHIBIT "A"

To Subordination Agreement among Bank of America,  
N.A. fka NationsBank, N.A.,  
Colorado Housing and Finance Authority and Durango &  
Silverton Narrow Gauge Railroad Company,  
a Colorado corporation

The goods and rolling stock listed below, and any and all proceeds therefrom and  
accessions thereto or therefore, and any and all documents with respect thereto or arising  
therefrom:

DESCRIPTION		NUMBER
Durango & Silverton	Nomad Business Car	B-3
Durango & Silverton	Locomotive	42 (formerly 420)
Durango & Silverton	Locomotive	R-1
Durango & Silverton	Locomotive	493
Durango & Silverton	Locomotive	498